

May 25, 2000

D.P.U./D.T.E. 96-AD-9-A

Adjudicatory hearing in the matter of the complaint of Cynthia Cobham protesting rates and charges for telephone service provided by Bell Atlantic-Massachusetts, formerly known as New England Telephone and Telegraph Service d/b/a/ NYNEX.

ORDER ON MOTION FOR RECONSIDERATION AND EXTENSION OF THE
JUDICIAL APPEAL PERIOD BY BELL ATLANTIC-MASSACHUSETTS

APPEARANCES: Cynthia Cobham

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Complainant

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FOR: BELL ATLANTIC-MASSACHUSETTS

Respondent

I. INTRODUCTION

On June 20, 1995, an informal hearing was held before the Consumer Division ("Division") of the Department of Telecommunication and Energy ("Department"), formerly known as the Department of Public Utilities, on the complaint of Cynthia Cobham ("Complainant") against New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts ("Bell Atlantic" or "Company") relating to rates and charges for telephone services. Bell Atlantic was dissatisfied with the informal hearing decision and requested an adjudicatory hearing before the Department pursuant to Rule 6.1(c) of the Rules and Practices Relating to Telephone Service to Residential Customers of New England Telephone Company, D.P.U. 18448 (1977) ("D.P.U. 18448"). The matter was docketed as D.P.U. 96-AD-9.

On June 5, 1997, an adjudicatory hearing was held at the Department's offices in conformance with the rules in D.P.U. 18448. On August 26, 1999, the Department issued an Order in this matter, Cobham v. NYNEX, D.P.U./D.T.E. 96-AD-9 (1999). The Department found that: (1) the Company must credit the Complainant \$405.31; and (2) Bell Atlantic's request to change Department policy on toll denial stated in its December 5, 1985 and June 26, 1987 letters⁽¹⁾ to Bell Atlantic was beyond the scope of this proceeding. Id. at 13, 14.

On September 15, 1999, Bell Atlantic filed a motion for reconsideration of the Department's Order and for an extension of the time to appeal the Order ("Motion"). Bell Atlantic states that it seeks reconsideration of the Order based on a mistake by the Department with regard to the Department's policy on toll denial (Motion at 2).

II. STANDARD OF REVIEW

The Department's Procedural Rule, 220 C.M.R. § 1.11(10), authorizes a party to file a motion for reconsideration within twenty days of service of a final Department Order. The Department's policy on reconsideration is well settled. Reconsideration of previously decided issues is granted only when extraordinary circumstances dictate that we take a fresh look at the record for the express purpose of substantively modifying a decision reached after review and deliberation. North Attleboro Gas Company, D.P.U. 94-130-B at 2 (1995); Boston Edison Company, D.P.U. 90-270-A at 2-3 (1991); Western Massachusetts Electric Company,

D.P.U. 558-A at 2 (1987).

A motion for reconsideration should bring to light previously unknown or undisclosed facts that would have a significant impact upon the decision already rendered. It should not attempt to reargue issues considered and decided in the main case. Commonwealth Electric Company, D.P.U. 92-3C-1A at 3-6 (1995); Boston Edison Company, D.P.U. 90-270-A at 3 (1991); Boston Edison Company, D.P.U. 1350-A at 4 (1983). The Department has denied reconsideration when the request rests on an issue or updated information presented for the first time in the motion for reconsideration. Western Massachusetts Electric Company, D.P.U. 85-270-C at 18-20 (1987); but see Western Massachusetts Electric Company,

D.P.U. 86-280-A at 16-18 (1987). Alternatively, a motion for reconsideration may be based on the argument that the Department's treatment of an issue was the result of mistake or inadvertence. Massachusetts Electric Company, D.P.U. 90-261-B at 7 (1991); New England Telephone and Telegraph Company, D.P.U. 86-33-J at 2 (1989); Boston Edison Company, D.P.U. 1350-A at 5 (1983).

III. BELL ATLANTIC'S MOTION

The Company argues that the Department inadvertently misstated its policy on toll denial by finding that the December 5, 1985 and June 26, 1987 letters from the Department to Bell Atlantic correctly reflect the existing Department policy (Motion at 2). Bell Atlantic states that it never implemented the directives contained in those Department letters (id. at 3). The Company states that it responded to the Department's letters stating that it was not technically feasible for the Company to implement selective toll-denial (id., citing

IR-DPU-1-4). The Company adds that the Department did not take any further formal action on this matter, and Bell Atlantic has continued to use all-carrier toll denial for those customers that have an outstanding balance to a specific interexchange carrier (id.). Bell Atlantic requests that the Department reconsider this matter and affirm Bell Atlantic's long-standing existing practice of all-carrier toll denial (id. at 4). The Company added that it cannot comply with the Department directive to "selectively deny the Complainant access only to those specific interexchange carriers to whom the Complainant has an unpaid balance" because the Complainant is no longer a Bell Atlantic customer (id. at 2, citing D.P.U./D.T.E. 96-AD-9,

at 14).

IV. ANALYSIS AND FINDINGS

A. Motion for Reconsideration

The Company argues that the Department's directive to apply the policy on toll denial to the Complainant, as set forth in the Department's December 5, 1985 and June 26, 1986 letters to Bell Atlantic, was based upon a mistake. The Complainant, however, never disputed the charges of those specific interexchange carriers to whom she may have had an unpaid balance. Instead, the Complainant disputed only Bell Atlantic's billing practices and pursued her claim pursuant to the rules established in D.P.U. 18448. D.P.U./D.T.E. 96-AD-9,

at 14 (citing Tr. at 25, 50).

This proceeding, and all consumer complaint proceedings adjudicated before the Department pursuant to D.P.U. 18448, concern facts specific only to the Complainant's billing problems with Bell Atlantic. As we stated in D.P.U./D.T.E. 96-AD-9, at 13-14, a full investigation into the facts related to Bell Atlantic's ability to implement certain billing practices for all of its customers is beyond the scope of this proceeding. Accordingly, we find that our treatment of the issue of toll denial as it applies to the Complainant was based upon consideration of the entire record in this proceeding and was not the result of mistake or inadvertence. Further, the application of the Department's policy on toll denial for the Complainant's unpaid bills is moot because the Complainant is no longer a customer of Bell Atlantic. Therefore, for the above reasons, the Department denies the Company's motion for reconsideration.

B. Motion for Extension of the Judicial Appeal Period

We now address Bell Atlantic's motion to extend the judicial appeal period. Upon motion filed with the Department within twenty days of a Department Order, the Department may grant a reasonable extension of the appeal period. G.L. c. 25, § 5; 220 C.M.R.

§ 1.11(11). Bell Atlantic filed its request for extension of the judicial appeal period at the end of the normal twenty-day deadline. The Department has well-established precedent that the filing of a motion for extension of the judicial appeal period automatically tolls the appeal period for the movant until the Department has ruled on the motion. Dispatch Communications of New England d/b/a Nexel Communications, Inc.,

D.P.U./D.T.E. 95-59-B/95-80/95-112/96-13, at 7 (1999) (Interlocutory Order on Appeal of Hearing Officer Ruling and Motions for Extensions of Appeal) (citations omitted). In this case, it would be difficult and burdensome to require Bell Atlantic to file its appeal

the same day we issue this Order. Instead, we find it appropriate to allow Bell Atlantic seven days from the date of this Order in which to file a petition for appeal with the Secretary of the Department, should the Company so choose.⁽²⁾

VI. ORDER

Accordingly, after due notice, hearing and consideration, it is

ORDERED: That the motion for reconsideration filed by Bell Atlantic-Massachusetts be and hereby is DENIED; and it is

FURTHER ORDERED: That the motion for extension of the judicial appeal period filed by Bell Atlantic-Massachusetts be and hereby is ALLOWED; and it is

FURTHER ORDERED: That Bell Atlantic-Massachusetts shall have seven days following the issuance of this Order in which to file a petition for appeal with the Secretary of the Commission.

By Order of the Department,

James Connelly, Chairman

W. Robert Keating, Commissioner

Paul B. Vasington, Commissioner

Eugene J. Sullivan, Jr., Commissioner

Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).

1. In the letters, the Department directed the Company to follow specific procedures for customer non-payment of bills for long-distance service provided by carriers other than Bell Atlantic. Specifically, the June 26, 1987 Department letter to the Company reads in part that, "[Bell Atlantic] may use toll denial for non-payment of interexchange carrier charges only if it can selectively deny access to the interexchange carrier's network to whom the balance is due" (Exh. NYNEX-1, at 2, 4-5).

2. An appellant must file its appeal with the Supreme Judicial Court within ten days of filing its petition for appeal of an Order with the Department. G.L. c. 25, § 5.

